

Public Law Board No. 2046

PARTIES  
TO  
DISPUTE:

Railroad Yardmasters of America

and

Terminal Railroad Association of St. Louis

STATEMENT  
OF  
CLAIM:

The personal record of Yardmaster R. J. Decker be cleared of all charges and the six-months' period of suspension served as discipline be set aside and Yardmaster Decker be paid for all time lost.

FINDINGS: Claimant was suspended for six months on the basis of Carrier findings.that he failed to comply with the trainmaster's instructions to dispatch an engine to pull Foreman Roemmich's train into the yard.

Carrier's findings are supported by substantial credible evidence. The crew of Roemmich's train was about to be overtaken by the Hours of Service Law. Prompt action was therefore necessary and the trainmaster issued instructions to have claimant dispatch an engine to May Street to pull Roemmich's train into the yard. The trainmaster was not able to contact claimant directly because of faulty radio communications and had Yardmaster Taylor pass on the instructions to claimant. The evidence clearly establishes that claimant received the trainmaster's instruction from Taylor without delay.

About an hour later, the trainmaster found that his instructions had not been complied with; when he questioned claimant in that regard, claimant replied that it was not his job to bring in Roemmich's train since the train is in Taylor's district. When the trainmaster observed that the least he could have done if he was going to let the crew sit on a train for an hour was to get the crew back by taxicab, claimant answered that that also was not his job. Claimant finally did order the taxicab for the crew after further conversation with the trainmaster.

It plainly was claimant's duty to comply immediately

with instructions in this situation. If he considered them unfair, he could have had his bargaining representative explore the matter with Carrier at a subsequent time. It was improper for him to disregard instructions and later debate them with the trainmaster.

We will not interfere with Carrier's determination that substantial discipline is warranted.

However, a suspension involving six-months' loss of pay to claimant is excessive when it is considered that claimant has 35 years of unblemished service, that there were no direct lines of communications between claimant and the trainmaster at the time instructions were given and that claimant was deprived of the complete appellate review contemplated by the parties' grievance procedure.

Carrier's appeals officer at the second step was the same man who signed the suspension decision and letter of denial at the first step, albeit in behalf of Terminal Superintendent Stubblefield who was absent due to illness. Claimant was entitled to independent review of his claim at each appellate level and Carrier should have used an officer at the second step who had nothing to do with the decision or first stage of the grievance procedure. See Fourth Division Awards 1742, 1743 and 2566.

The appeals procedure objection should have been raised at the second step or, at the latest, when appeal

was made to the Director of Labor Relations at the third level. Petitioner's practice of waiting until the grievance procedure has been completely exhausted to advise Carrier of procedural objections is not sound, in this Referee's opinion, so far as this situation is concerned. (Fourth Division Award 3331, which did uphold that practice, was concerned with a materially different set of facts.) We nevertheless are disposed to give some, if not controlling, weight to the failure to afford claimant complete appellate review since it is a defect in fundamental process.

In the light of the foregoing discussion, we will direct Carrier to reduce the period of suspension to three months. As revised, the discipline is sufficiently serious to remind employees of their obligation to comply promptly with instructions. Claimant is to be paid for all time lost beyond that ninety-day period.

AWARD: Claim sustained to the extent indicated above in the last paragraph of Findings.

Adopted at St. Louis, Missouri, , 1978.

ORDER: Carrier is hereby ordered to make the above Award effective on or before , 1978.



Harold M. Weston, Chairman